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In re Application of
MONJEAN et al.
Application No.: 09/700,043
PCT No.: PCT/EP00/01314
Int. Filing Date: 18 February 2000
Priority Date: 09 March 1999
Attorney's Docket No.: 40770-000117/US
For: BISTABLE MAGNETIC DRIVE FOR A
SWITCH

DECISION ON PETITION

UNDER 37 CFR 1.181

This is in response to applicant's "Petition under 37 CFR 1.181 to Withdraw Holding of Abandonment" filed in the United States Patent and Trademark Office (USPTO) on 27 November 2007. Applicant requests the withdrawal of the Notification of Abandonment mailed on 29 May 2002, which indicated that applicant had failed to respond to a Notification of Defective Response (Form PCT/DO/EO/916).

BACKGROUND

A review of the application file reveals that the Notification of Defective Response was mailed to the law firm of record (Birch Stewart Kolasch & Birch) by the USPTO on 18 May 2001. The notification indicated that an oath or declaration was not in compliance with 37 CFR 1.497(a) and (b) and was required. Applicant was given one month to respond to the Notification or within the time remaining in the response set forth in the Notification of Missing Requirements (or until 30 June 2001). Because no response to the Notification of Defective Response was received, the application was held to be **ABANDONED** as of midnight on 30 June 2001.

On 29 May 2002, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicant to the law firm of record (Birch Stewart Kolasch & Birch) indicating that applicant had failed to respond to the Notification of Defective Response.

On 10 July 2003, applicant, through new counsel (Harness, Dickey & Pierce), filed a Status Inquiry regarding this application.

On 21 August 2003, a USPTO communication (directed to Harness, Dickey & Pierce) informed applicant that no response to the 18 May 2001 Notification of Defective Response was of record and that the application was abandoned. A copy of the 29 May 2002 Notification of Abandonment (Form PCT/DO/EO/909) was attached to this Office communication.

On 27 November 2007, four and a half years after the Status Inquiry, applicant filed a petition to withdraw the holding of abandonment.

DISCUSSION

At the outset of his petition to withdraw the holding of abandonment under 37 CFR 1.181, applicant states:

It was recently discovered that a Notice of Abandonment was mailed May 29, 2002, a copy of which was never received from the United States Patent and Trademark Office. Further, a status inquiry was filed July 10, 2003, to which Applicant did not receive any response.

The four and a half year delay in filing this petition to withdraw the holding of abandonment raises some questions.¹ Applicant has not explained or provided any evidence regarding his assertion that he failed to receive the Office communication of 21 August 2003 in response to his Status Inquiry. Such explanation is required. Applicant's explanation regarding the failure to receive this Office action must include the following: (1) a statement from the practitioner stating that the Office action was not received by the practitioner; (2) the practitioner's statement must also attest to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received must be attached to and referenced in practitioner's statement.

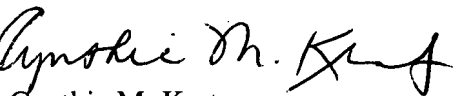
Applicant's petition to withdraw the holding of abandonment is dismissed without prejudice at this time.

CONCLUSION

Applicant's petition under 37 CFR 1.181 to request to withdraw holding of abandonment is **DISMISSED WITHOUT PREJUDICE**. The application remains **ABANDONED**.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision.

Any further correspondence with respect to this matter should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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¹ 37 CFR 1.181(f) states that any petition not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely. The two month period is not extendable.